

REMARKS

These remarks are in response to the Office Action dated October 28, 2008, which has a shortened statutory period for response set to expire January 28, 2009. No extension of time is required.

Interview Summary

Two interviews were held on January 27, 2009 to discuss the merits of this application. Examiner Brandon Jackson and Applicants' attorney Larry Henneman participated in the first interview. Examiner Brandon Jackson, Supervisory Examiner Patricia Bianco, and Applicants' attorney Larry Henneman participated in the second interview.

During the first interview, Mr. Henneman pointed out that the Luttrell reference did not disclose all of the limitations of the independent claims. In particular, Mr. Henneman pointed out that the heel cup and strap of the Luttrell reference rotated about an axis passing through the ankle joint of a user during use, so that the strap 16 moved upward when the heel cup moved downward, and vice versa. Examiner Jackson disagreed.

It was suggested that this disagreement could be obviated if claim language further distinguishing the reference could be agreed upon. Mr. Henneman and Examiner Jackson agreed that the fundamental operation of the present invention and the device of Luttrell were significantly different. In particular, the device of Luttrell allows normal articulation of the ankle joint surfaces during use. (Col. 3, Lines 3-5) In contrast, the present invention gaps the ankle joint of the user. Mr. Henneman and Examiner Jackson discussed claim language directed to this difference, and it was suggested to involve Supervisory Examiner Patricia Bianco to avoid the later rejection of agreed upon claim language.

During the second interview, Examiner Jackson and Examiner Bianco suggested adding the limitation "thereby providing a sufficient force to gap the ankle of a user" to the ends of Claims 1 and 42. Mr. Henneman agreed. Mr. Henneman suggested adding the limitation "said force sufficient to gap the ankle of a user." Examiner Jackson and Examiner Bianco agreed. In summary, it was agreed that the foregoing limitations patentably distinguish over the prior art of record.

Applicants appreciate and thank Examiner Jackson and Examiner Bianco for their constructive assistance and the cooperative nature of the interviews.

Claims

Claims 1-45 are pending in the above-identified application. Claims 1-45 are rejected over prior art. Claims 1, 37, and 42 are amended, and Claims 2-36, 38-41, and 43-45 remain as previously presented or originally filed. Reconsideration is requested.

Rejections Under 35 U.S.C. §102 and 35 U.S.C. §103

Claims 1-4, 7-21, 23-29, and 31-45 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 5,144,943 (Luttrell et al.). Claims 5-6 and 22 are rejected under 35 U.S.C. §103 as unpatentable over Luttrell et al. in view of Applicants' specification. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Luttrell et al. in view of U.S. Patent No. 5,215,508 (Bastow).

The claims are amended to obviate the rejections over the prior art and to expedite the allowance of this application. The amendments are not an admission with respect to the propriety of the rejections.

Claims 1-36 and 43

Claim 1 is amended to include the exact language agreed to patentably distinguish over the prior art. Claims 2-36 and 43 depend, either directly or indirectly from Claim 1 and are, therefore, distinguished over the prior art for at least the same reasons as Claim 1. Applicants, therefore, respectfully request allowance of Claims 1-36 and 43.

Claims 37-41 and 44

Independent Claim 37 is amended to include the exact language agreed to patentably distinguish over the prior art, except the phrase "the ankle of a user" is changed to "an ankle of said person." This change is made to avoid a 35 U.S.C. §112 issue, because "a person's foot" and "the person's leg" are already recited in the claim. Applicants' concern is that the later introduction of "a user" might cause confusion as to whether the "person" and the "user" were the same. Should the Examiner disagree with this change, the Examiner is authorized to change "said person" to "said user."

For the reasons set forth above, Claim 37 is now allowable over the prior art of record. Claims 38-41 and 44 depend, either directly or indirectly, from Claim 37 and are, therefore, allowable over the prior art of record for at least the same reasons as Claim 37. Applicants, therefore, respectfully request allowance of Claims 37-41 and 44.

Claims 42 and 45

Independent Claim 42 is amended to include the exact language agreed to patentably distinguish over the prior art, except the word “thereby” is changed to “and,” because the word “thereby” is already present in Line 6 of Claim 42. Claim 42 is now, therefore, allowable over the prior art of record. Claim 45 depends from Claim 42 and is, therefore, allowable over the prior art of record for at least the same reasons as Claim 42.

For the above reasons Applicants request reconsideration and withdrawal of the rejections under 35 U.S.C. §§ 102 and 103.

For the foregoing reasons, Applicants believe Claims 1-45 are now in condition for allowance. Should the Examiner undertake any action other than allowance of Claims 1-45, or if the Examiner has any questions or suggestions for expediting the prosecution of this application, the Examiner is requested to contact Applicants' attorney at (269) 279-8820.

Respectfully submitted,

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/Larry E. Henneman, Jr./
Larry E. Henneman, Jr., Reg. No. 41,063
Attorney for Applicant(s)
Henneman & Associates, PLC
714 W. Michigan Ave.
Three Rivers, MI 49093

CERTIFICATE OF FACSIMILE TRANSMISSION (37 CFR 1.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being electronically filed or transmitted via facsimile, on the date shown below, to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, at (571) 273-8300.

Date: January 28, 2009

/Larry E. Henneman, Jr./
Larry E. Henneman, Jr.